

Courts, Cops, and Consequences: The Colorado Edition

Wednesday, March 24, 2021

This program will be presented by the Rhone-Brackett and Sotomayor American Inns of Court using the Zoom.com platform. With the increasingly mainstream visibility of racial equality movements, such as Black Lives Matter, public interest and discourse around qualified immunity has grown. The doctrine is an automatic defense in a civil lawsuit, unless a plaintiff can show that there has been a case in the U.S. Supreme Court or in a relevant Federal Appeals Court where the precise conduct at issue was held unconstitutional. Last June, Colorado's state legislature enacted Senate Bill 217. How and why the passage of this legislation impacts the concept of qualified immunity in Colorado is the subject of discussion.

The Inn has invited Mari Newman of Kilmer, Lane & Newman, LLP and Rebecca Wallace Senior Staff Attorney & Senior Policy Counsel at the ACLU of Colorado for a conversation about Colorado's new law enforcement reform legislation (SB 217).

AGENDA

- **5:30-5:50** Reception
- **5:50-6:00** Introduction (Shannon)
- **6:00-7:00** Presentation by Mari Newman and Rebecca Wallace (Liz & Anna)
- **7:00-7:30** Q & A

PROGRAM

- A. Discussion of Colorado's Law Enforcement Accountability and Reform Law, Senate Bill 20-217
- B. References and Materials
 - [*2020 Colorado Senate Bill 217 Enacted, June 2020*](#)
 - [*ACLU SB 20-217 Fact Sheet*](#)
 - [*Colorado's Police Reform Law Will Help Rein In Worst of Law Enforcement Behavior* by Mari Newman: June 2020](#) • [*ACLU: Qualified Immunity Validates and Perpetuates Violence Against Communities of Color*](#)
 - [*Attorney: Colorado's "Fleeing Felon" Statute Is Unconstitutional* by Michael Roberts: December 2019](#)
- C. Other References
 - [*Qualified Immunity: Explained* by Amir H. Ali & Emily Clark: June 2019](#)
 - [*CATO Institute: Qualified Immunity: A Legal, Practical, and Moral Failure*](#)
 - [*The Supreme Court Is Giving Lower Courts a Subtle Hint to Rein In Police Misconduct* by Joanna Schwartz: March 2021](#)
 - [*National Review: The Case Against Qualified Immunity* by David Deerson: June 2020](#)
- D. Accreditation form (available on the Rhone-Brackett website)

FACULTY

Mari Newman is a civil rights and employment law attorney who has dedicated her entire career to advocating on behalf of the underdog and the disenfranchised against the entrenched power of government and corporations. Mari's decades of experience representing families who have lost loved ones to police violence guided her work as part of the coalition that drafted Colorado's ground-breaking law enforcement reform bill. She has received numerous awards for her work. <https://www.kln-law.com/mari-newman>

Rebecca Wallace is Senior Staff Attorney & Senior Policy Counsel at the ACLU of Colorado. She joined the ACLU in 2010. Rebecca spent a decade doing civil rights impact litigation but in recent years has turned her attention to passing legislation to create a more fair and just criminal legal system. She has played a key role in helping decrease debtors prison practices in Colorado and bringing accountability and oversight to Colorado's municipal courts. <https://aclu-co.org/about-us/staff/>

Lisabeth Perez Castle's dedication and success has been recognized through the many requests she has received to serve the bar and the Courts. Liz is a former president of both the Alfred Arraj and Justice Sonia Sotomayor American Inns of Court, a director of the Denver Bar Association and a board member of the Colorado Hispanic Bar Association. Liz has also served as a lecturer for the American Bar Association to teach foreign national attorneys and judges the U.S. system of justice. Liz has also served as counsel to the Mexican Consulate. <https://www.castleandcastlepc.com/attorney-profiles/lisabeth-castle/>

Anna Fullerton joined Benezra & Culver as an associate attorney in April of 2019. Her practice includes all aspects of employment law and civil rights litigation. While at the University of Denver Sturm College of Law, Ms. Fullerton interned with the Hearings Unit of the Equal Employment Opportunity Commission (EEOC), the American Civil Liberties Union (ACLU), and another Denver based civil rights firm, Kilmer, Lane & Newman. She also worked as a student-attorney in the University's Civil Litigation Clinic where she successfully petitioned to administratively close deportation proceedings for a Special Immigrant Juvenile Status case and defended a client against eviction proceedings.

Courtney Keyes is a second-year student in the University of Denver Sturm College of Law Professional Part-Time JD Program. She works full-time as a Business Applications and Quality Analyst for a Medicare Contractor. She was in the Part B Appeals area for six years before transferring to the Electronic Data Interchange team in late 2019. Courtney volunteers as a Court Appointed Special Advocate for the 17th Judicial District of Colorado; serves on the Thornton Arts, Sciences, and Humanities Council Board of Directors; and helps with the Transportation Law Journal as a Technical Editor.

Shannon Calhoun is a second-year law student at the University of Denver Sturm College of Law. While at DU, Shannon has been involved in the Hon. Phillip S. Figa Motions Competition, the Student Trial Lawyers Association Mock Trial Program, and is a Staff Editor for Denver Law Review. Shannon has a background in finance and has experience working in-house for Arrow Electronics, Inc.

2020 Colo. SB. 217

Enacted, June 19, 2020

Reporter

2020 Colo. ALS 110; 2020 Colo. Ch. 110; 2020 Colo. SB. 217

COLORADO ADVANCE LEGISLATIVE SERVICE > COLORADO 2ND REGULAR SESSION OF THE 72ND GENERAL ASSEMBLY > CHAPTER 110 > SENATE BILL NO. 217

Notice

Added: Text highlighted in green

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Synopsis

CONCERNING MEASURES TO ENHANCE LAW ENFORCEMENT INTEGRITY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Text

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration.

The general assembly hereby finds and declares that the provisions of Senate Bill 20-217, enacted at the second regular session of the seventy-second general assembly, are matters of statewide concern.

SECTION 2. In Colorado Revised Statutes, add part 9 to article 31 of title 24 as follows:

Part 9 Law Enforcement Integrity

24-31-901. Definitions.

AS USED IN THIS PART 9, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) “CONTACTS” MEANS AN INTERACTION WITH AN INDIVIDUAL, WHETHER OR NOT THE PERSON IS IN A MOTOR VEHICLE, INITIATED BY A PEACE

OFFICER, WHETHER CONSENSUAL OR NONCONSENSUAL, FOR THE PURPOSE OF ENFORCING THE LAW OR INVESTIGATING POSSIBLE VIOLATIONS OF THE LAW. “CONTACTS” DO NOT INCLUDE ROUTINE INTERACTIONS WITH THE PUBLIC AT THE POINT OF ENTRY OR EXIT FROM A CONTROLLED AREA.

- (2) “DEMOGRAPHIC INFORMATION” MEANS RACE, ETHNICITY, SEX, AND APPROXIMATE AGE.
- (3) “PEACE OFFICER” MEANS ANY PERSON EMPLOYED BY A POLITICAL SUBDIVISION OF THE STATE REQUIRED TO BE CERTIFIED BY THE P.O.S.T. BOARD PURSUANT TO SECTION 16-2.5-102, A COLORADO STATE PATROL OFFICER AS DESCRIBED IN SECTION 16-2.5-114, AND ANY NONCERTIFIED DEPUTY SHERIFF AS DESCRIBED IN SECTION 16-2.5-103 (2).
- (4) “PHYSICAL FORCE” MEANS THE APPLICATION OF PHYSICAL TECHNIQUES OR TACTICS, CHEMICAL AGENTS, OR WEAPONS TO ANOTHER PERSON.
- (5) “SERIOUS BODILY INJURY” HAS THE SAME MEANING AS IN SECTION 18-1-901 (3)(p).
- (6) “TAMPER” MEANS TO INTENTIONALLY DAMAGE, DISABLE, DISLODGE, OR OBSTRUCT THE SIGHT OR SOUND OR OTHERWISE IMPAIR FUNCTIONALITY OF THE BODY-WORN CAMERA OR TO INTENTIONALLY DAMAGE, DELETE, OR FAIL TO UPLOAD SOME OR ALL PORTIONS OF THE VIDEO AND AUDIO.

24-31-902. Incident recordings — release — tampering — fine.

(1)

(a)

(I) BY JULY 1, 2023, ALL LOCAL LAW ENFORCEMENT AGENCIES IN THE STATE AND THE COLORADO STATE PATROL SHALL PROVIDE BODY-WORN CAMERAS FOR EACH PEACE OFFICER OF THE LAW ENFORCEMENT AGENCY WHO INTERACTS WITH MEMBERS OF THE PUBLIC. LAW ENFORCEMENT AGENCIES MAY SEEK FUNDING PURSUANT TO SECTION 24-33.5-519.

(II)

(A) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(II)(B) OR (1)(a)(II)(C) OF THIS SECTION, A PEACE OFFICER SHALL WEAR AND ACTIVATE A BODY-WORN CAMERA OR DASH CAMERA, IF THE PEACE OFFICER’S VEHICLE IS EQUIPPED WITH A DASH CAMERA, WHEN RESPONDING TO A CALL FOR SERVICE OR DURING ANY INTERACTION WITH THE PUBLIC INITIATED BY THE PEACE OFFICER, WHETHER CONSENSUAL OR NONCONSENSUAL, FOR THE PURPOSE OF ENFORCING THE LAW OR INVESTIGATING POSSIBLE VIOLATIONS OF THE LAW.

- (B) A PEACE OFFICER MAY TURN OFF A BODY-WORN CAMERA TO AVOID RECORDING PERSONAL INFORMATION THAT IS NOT CASE RELATED; WHEN WORKING ON AN UNRELATED ASSIGNMENT; WHEN THERE IS A LONG BREAK IN THE INCIDENT OR CONTACT THAT IS NOT RELATED TO THE INITIAL INCIDENT; AND IN ADMINISTRATIVE, TACTICAL, AND MANAGEMENT DISCUSSIONS.
- (C) A PEACE OFFICER DOES NOT NEED TO WEAR OR ACTIVATE A BODY-WORN CAMERA IF THE PEACE OFFICER IS WORKING UNDERCOVER.
- (D) THE PROVISIONS OF THIS SUBSECTION (1)(a)(II) DO NOT APPLY TO JAIL PEACE OFFICERS OR STAFF OF A LOCAL LAW ENFORCEMENT AGENCY IF THE JAIL HAS VIDEO CAMERAS; EXCEPT THAT THIS SUBSECTION (1)(a)(II) APPLIES TO JAIL PEACE OFFICERS WHEN PERFORMING A TASK THAT REQUIRES AN ANTICIPATED USE OF FORCE, INCLUDING CELL EXTRACTIONS AND RESTRAINT CHAIRS. THE PROVISIONS OF THIS SUBSECTION (1)(a)(II) ALSO DO NOT APPLY TO THE CIVILIAN OR ADMINISTRATIVE STAFF OF THE COLORADO STATE PATROL OR A LOCAL LAW ENFORCEMENT AGENCY, THE EXECUTIVE DETAIL OF THE COLORADO STATE PATROL, AND PEACE OFFICERS WORKING IN A COURTROOM.
- (III) IF A PEACE OFFICER FAILS TO ACTIVATE A BODY-WORN CAMERA OR DASH CAMERA AS REQUIRED BY THIS SECTION OR TAMPERS WITH BODY-WORN- OR DASH-CAMERA FOOTAGE OR OPERATION WHEN REQUIRED TO ACTIVATE THE CAMERA, THERE IS A PERMISSIVE INFERENCE IN ANY INVESTIGATION OR LEGAL PROCEEDING, EXCLUDING CRIMINAL PROCEEDINGS AGAINST THE PEACE OFFICER, THAT THE MISSING FOOTAGE WOULD HAVE REFLECTED MISCONDUCT BY THE PEACE OFFICER. IF A PEACE OFFICER FAILS TO ACTIVATE OR REACTIVATE HIS OR HER BODY-WORN CAMERA AS REQUIRED BY THIS SECTION OR TAMPERS WITH BODY-WORN OR DASH CAMERA FOOTAGE OR OPERATION WHEN REQUIRED TO ACTIVATE THE CAMERA, ANY STATEMENTS SOUGHT TO BE INTRODUCED IN A PROSECUTION THROUGH THE PEACE OFFICER RELATED TO THE INCIDENT THAT WERE NOT RECORDED DUE TO THE PEACE OFFICER'S FAILURE TO ACTIVATE OR REACTIVATE THE BODY-WORN CAMERA AS REQUIRED BY THIS SECTION OR IF THE STATEMENT WAS NOT RECORDED BY OTHER MEANS CREATES A REBUTTABLE PRESUMPTION OF INADMISSIBILITY. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THIS SUBSECTION (1)(a)(III) DOES NOT APPLY IF THE BODY-WORN CAMERA WAS NOT ACTIVATED DUE TO A MALFUNCTION OF THE BODY-WORN CAMERA AND THE PEACE OFFICER WAS NOT AWARE OF THE MALFUNCTION, OR WAS UNABLE TO RECTIFY IT, PRIOR TO THE INCIDENT, PROVIDED THAT THE LAW ENFORCEMENT

AGENCY'S DOCUMENTATION SHOWS THE PEACE OFFICER CHECKED THE FUNCTIONALITY OF THE BODY-WORN CAMERA AT THE BEGINNING OF HIS OR HER SHIFT.

(IV)

(A) IN ADDITION TO ANY CRIMINAL LIABILITY AND PENALTY UNDER THE LAW, IF A COURT, ADMINISTRATIVE LAW JUDGE, HEARING OFFICER, OR A FINAL DECISION IN AN INTERNAL INVESTIGATION FINDS THAT A PEACE OFFICER INTENTIONALLY FAILED TO ACTIVATE A BODY-WORN CAMERA OR DASH CAMERA OR TAMPERED WITH ANY BODY-WORN OR DASH CAMERA, EXCEPT AS PERMITTED IN THIS SECTION, THE PEACE OFFICER'S EMPLOYER SHALL IMPOSE DISCIPLINE UP TO AND INCLUDING TERMINATION, TO THE EXTENT PERMITTED BY APPLICABLE CONSTITUTIONAL AND STATUTORY PERSONNEL LAWS AND CASE LAW.

(B) IN ADDITION TO ANY CRIMINAL LIABILITY AND PENALTY UNDER THE LAW, IF A COURT, ADMINISTRATIVE LAW JUDGE, HEARING OFFICER, OR A FINAL DECISION IN AN INTERNAL INVESTIGATION FINDS THAT A PEACE OFFICER INTENTIONALLY FAILED TO ACTIVATE A BODY-WORN CAMERA OR DASH CAMERA OR TAMPERED WITH ANY BODY-WORN OR DASH CAMERA, EXCEPT AS PERMITTED IN THIS SECTION, WITH THE INTENT TO CONCEAL UNLAWFUL OR INAPPROPRIATE ACTIONS OR OBSTRUCT JUSTICE, THE P.O.S.T. BOARD SHALL SUSPEND THE PEACE OFFICER'S CERTIFICATION FOR A PERIOD OF NOT LESS THAN ONE YEAR AND THE SUSPENSION MAY ONLY BE LIFTED WITHIN THE PERIOD OF THE SUSPENSION IF THE PEACE OFFICER IS EXONERATED BY A COURT.

(C) IN ADDITION TO ANY CRIMINAL LIABILITY AND PENALTY UNDER THE LAW, IF A COURT, ADMINISTRATIVE LAW JUDGE, HEARING OFFICER, OR A FINAL DECISION IN AN INTERNAL INVESTIGATION FINDS THAT A PEACE OFFICER INTENTIONALLY FAILED TO ACTIVATE A BODY-WORN CAMERA OR DASH CAMERA OR TAMPERED WITH ANY BODY-WORN OR DASH CAMERA, EXCEPT AS PERMITTED IN THIS SECTION, WITH THE INTENT TO CONCEAL UNLAWFUL OR INAPPROPRIATE ACTIONS, OR OBSTRUCT JUSTICE, IN AN INCIDENT RESULTING IN A CIVILIAN DEATH, THE P.O.S.T. BOARD SHALL PERMANENTLY REVOKE THE PEACE OFFICER'S CERTIFICATION AND THE REVOCATION MAY ONLY BE OVERTURNED IF THE PEACE OFFICER IS EXONERATED BY A COURT.

(b) A LOCAL LAW ENFORCEMENT AGENCY AND THE COLORADO STATE PATROL SHALL ESTABLISH AND FOLLOW A RETENTION SCHEDULE FOR

BODY-WORN CAMERA RECORDINGS IN COMPLIANCE WITH COLORADO STATE ARCHIVES RULES AND DIRECTION.

(2)

(a) FOR ALL INCIDENTS IN WHICH THERE IS A COMPLAINT OF PEACE OFFICER MISCONDUCT BY ANOTHER PEACE OFFICER, A CIVILIAN, OR NONPROFIT ORGANIZATION, THROUGH NOTICE TO THE LAW ENFORCEMENT AGENCY INVOLVED IN THE ALLEGED MISCONDUCT, THE LOCAL LAW ENFORCEMENT AGENCY OR THE COLORADO STATE PATROL SHALL RELEASE ALL UNEDITED VIDEO AND AUDIO RECORDINGS OF THE INCIDENT, INCLUDING THOSE FROM BODY-WORN CAMERAS, DASH CAMERAS, OR OTHERWISE COLLECTED THROUGH INVESTIGATION, TO THE PUBLIC WITHIN TWENTY-ONE DAYS AFTER THE LOCAL LAW ENFORCEMENT AGENCY OR THE COLORADO STATE PATROL RECEIVED THE COMPLAINT OF MISCONDUCT.

(b)

(I) ALL VIDEO AND AUDIO RECORDINGS DEPICTING A DEATH MUST BE PROVIDED UPON REQUEST TO THE VICTIM'S SPOUSE, PARENT, LEGAL GUARDIAN, CHILD, SIBLING, GRANDPARENT, GRANDCHILD, SIGNIFICANT OTHER, OR OTHER LAWFUL REPRESENTATIVE, AND SUCH PERSON SHALL BE NOTIFIED OF HIS OR HER RIGHT, PURSUANT TO SECTION 24-4.1-302.5 (1)(j.8), TO RECEIVE AND REVIEW THE RECORDING AT LEAST SEVENTY-TWO HOURS PRIOR TO PUBLIC DISCLOSURE. A PERSON SEVENTEEN YEARS OF AGE AND UNDER IS CONSIDERED INCAPACITATED, UNLESS LEGALLY EMANCIPATED.

(II)

(A) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, ANY VIDEO THAT RAISES SUBSTANTIAL PRIVACY CONCERNS FOR CRIMINAL DEFENDANTS, VICTIMS, WITNESSES, JUVENILES, OR INFORMANTS, INCLUDING VIDEO DEPICTING NUDITY; A SEXUAL ASSAULT; A MEDICAL EMERGENCY; PRIVATE MEDICAL INFORMATION; A MENTAL HEALTH CRISIS; A VICTIM INTERVIEW; A MINOR, INCLUDING ANY IMAGES OR INFORMATION THAT MIGHT UNDERMINE THE REQUIREMENT TO KEEP CERTAIN JUVENILE RECORDS CONFIDENTIAL; ANY PERSONAL INFORMATION OTHER THAN THE NAME OF ANY PERSON NOT ARRESTED, CITED, CHARGED, OR ISSUED A WRITTEN WARNING, INCLUDING A GOVERNMENT-ISSUED IDENTIFICATION NUMBER, DATE OF BIRTH, ADDRESS, OR FINANCIAL INFORMATION; SIGNIFICANTLY EXPLICIT AND GRUESOME BODILY INJURY, UNLESS THE INJURY WAS CAUSED BY A PEACE OFFICER; OR THE INTERIOR OF A HOME OR TREATMENT FACILITY, SHALL BE REDACTED OR BLURRED TO PROTECT THE SUBSTANTIAL PRIVACY INTEREST WHILE STILL ALLOWING PUBLIC RELEASE.

UNREDACTED FOOTAGE SHALL NOT BE RELEASED WITHOUT THE WRITTEN AUTHORIZATION OF THE VICTIM OR, IF THE VICTIM IS DECEASED OR INCAPACITATED, THE WRITTEN AUTHORIZATION OF THE VICTIM'S NEXT OF KIN. A PERSON SEVENTEEN YEARS OF AGE AND UNDER IS CONSIDERED INCAPACITATED, UNLESS LEGALLY EMANCIPATED.

(B) IF REDACTION OR BLURRING IS INSUFFICIENT TO PROTECT THE SUBSTANTIAL PRIVACY INTEREST, THE LOCAL LAW ENFORCEMENT AGENCY OR THE COLORADO STATE PATROL SHALL, UPON REQUEST, RELEASE THE VIDEO TO THE VICTIM OR, IF THE VICTIM IS DECEASED OR INCAPACITATED, TO THE VICTIM'S SPOUSE, PARENT, LEGAL GUARDIAN, CHILD, SIBLING, GRANDPARENT, GRANDCHILD, SIGNIFICANT OTHER, OR OTHER LAWFUL REPRESENTATIVE WITHIN TWENTY DAYS AFTER RECEIPT OF THE COMPLAINT OF MISCONDUCT. IN CASES IN WHICH THE RECORDING IS NOT RELEASED TO THE PUBLIC PURSUANT TO THIS SUBSECTION (2)(b)(II)(B), THE LOCAL LAW ENFORCEMENT AGENCY SHALL NOTIFY THE PERSON WHOSE PRIVACY INTEREST IS IMPLICATED, IF CONTACT INFORMATION IS KNOWN, WITHIN TWENTY DAYS AFTER RECEIPT OF THE COMPLAINT OF MISCONDUCT, AND INFORM THE PERSON OF HIS OR HER RIGHT TO WAIVE THE PRIVACY INTEREST.

(C) A WITNESS, VICTIM, OR CRIMINAL DEFENDANT MAY WAIVE IN WRITING THE INDIVIDUAL PRIVACY INTEREST THAT MAY BE IMPLICATED BY PUBLIC RELEASE. UPON RECEIPT OF A WRITTEN WAIVER OF THE APPLICABLE PRIVACY INTEREST, ACCOMPANIED BY A REQUEST FOR RELEASE, THE LAW ENFORCEMENT AGENCY MAY NOT REDACT OR WITHHOLD RELEASE TO PROTECT THAT PRIVACY INTEREST. THE HEARING SHALL BE CONSIDERED A CRITICAL STAGE PURSUANT TO SECTION 24-4.1-302 AND GIVES VICTIMS THE RIGHT TO BE HEARD PURSUANT TO 24-4.1-302.5.

(III) ANY VIDEO THAT WOULD SUBSTANTIALLY INTERFERE WITH OR JEOPARDIZE AN ACTIVE OR ONGOING INVESTIGATION MAY BE WITHHELD FROM THE PUBLIC; EXCEPT THAT THE VIDEO SHALL BE RELEASED NO LATER THAN FORTY-FIVE DAYS FROM THE DATE OF THE ALLEGATION OF MISCONDUCT. IN ALL CASES WHEN RELEASE OF A VIDEO IS DELAYED IN RELIANCE ON THIS SUBSECTION (2)(b)(III), THE PROSECUTING ATTORNEY SHALL PREPARE A WRITTEN EXPLANATION OF THE INTERFERENCE OR JEOPARDY THAT JUSTIFIES THE DELAYED RELEASE, CONTEMPORANEOUS WITH THE REFUSAL TO RELEASE THE VIDEO. UPON RELEASE OF THE VIDEO, THE PROSECUTING ATTORNEY SHALL RELEASE THE WRITTEN EXPLANATION TO THE PUBLIC.

- (c) IF CRIMINAL CHARGES HAVE BEEN FILED AGAINST ANY PARTY TO THE INCIDENT, THAT PARTY MUST FILE ANY CONSTITUTIONAL OBJECTION TO RELEASE OF THE RECORDING IN THE PENDING CRIMINAL CASE BEFORE THE TWENTY-ONE-DAY PERIOD EXPIRES. ONLY IN CASES IN WHICH THERE IS A PENDING CRIMINAL INVESTIGATION OR PROSECUTION OF A PARTY TO THE INCIDENT, THE TWENTY-ONE-DAY PERIOD SHALL BEGIN FROM THE DATE OF APPOINTMENT OF COUNSEL, THE FILING OF AN ENTRY OF APPEARANCE BY COUNSEL, OR THE ELECTION TO PROCEED PRO SE BY THE DEFENDANT IN THE CRIMINAL PROSECUTION MADE ON THE RECORD BEFORE A JUDGE. IF THE DEFENDANT ELECTS TO PROCEED PRO SE IN THE CRIMINAL CASE, THE COURT SHALL ADVISE THE DEFENDANT OF THE TWENTY-ONE-DAY DEADLINE FOR THE DEFENDANT TO FILE ANY CONSTITUTIONAL OBJECTION TO RELEASE OF THE RECORDING IN THE PENDING CRIMINAL CASE AS PART OF THE COURT'S ADVISEMENT. THE COURT SHALL HOLD A HEARING ON ANY OBJECTION NO LATER THAN SEVEN DAYS AFTER IT IS FILED AND ISSUE A RULING NO LATER THAN THREE DAYS AFTER THE HEARING.

24-31-903. Division of criminal justice report.

- (1) BEGINNING JULY 1, 2023, THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL CREATE AN ANNUAL REPORT INCLUDING ALL OF THE INFORMATION THAT IS REPORTED TO THE DIVISION PURSUANT TO SUBSECTION (2) OF THIS SECTION, AGGREGATED AND BROKEN DOWN BY THE LAW ENFORCEMENT AGENCY THAT EMPLOYS PEACE OFFICERS, ALONG WITH THE UNDERLYING DATA.
- (2) BEGINNING JANUARY 1, 2023, THE COLORADO STATE PATROL AND EACH LOCAL LAW ENFORCEMENT AGENCY THAT EMPLOYS PEACE OFFICERS SHALL REPORT TO THE DIVISION OF CRIMINAL JUSTICE:
- (a) ALL USE OF FORCE BY ITS PEACE OFFICERS THAT RESULTS IN DEATH OR SERIOUS BODILY INJURY, INCLUDING:
- (I) THE DATE, TIME, AND LOCATION OF THE USE OF FORCE;
- (II) THE PERCEIVED DEMOGRAPHIC INFORMATION OF THE PERSON CONTACTED, PROVIDED THAT THE IDENTIFICATION OF THESE CHARACTERISTICS IS BASED ON THE OBSERVATION AND PERCEPTION OF THE PEACE OFFICER MAKING THE CONTACT AND OTHER AVAILABLE DATA;
- (III) THE NAMES OF ALL PEACE OFFICERS WHO WERE AT THE SCENE, IDENTIFIED BY WHETHER THE PEACE OFFICER WAS INVOLVED IN THE USE OF FORCE OR NOT; EXCEPT THAT THE IDENTITY OF OTHER PEACE OFFICERS AT THE SCENE NOT DIRECTLY INVOLVED IN THE USE OF FORCE SHALL BE IDENTIFIED BY THE OFFICER'S IDENTIFICATION NUMBER ISSUED BY THE P.O.S.T. BOARD UNLESS

THE PEACE OFFICER IS CHARGED CRIMINALLY OR IS A DEFENDANT TO A CIVIL SUIT AS A RESULT ARISING FROM THE USE OF FORCE;

(IV) THE TYPE OF FORCE USED, THE SEVERITY AND NATURE OF THE INJURY, WHETHER THE PEACE OFFICER SUFFERED PHYSICAL INJURY, AND THE SEVERITY OF THE PEACE OFFICER'S INJURY;

(V) WHETHER THE PEACE OFFICER WAS ON DUTY AT THE TIME OF THE USE OF FORCE;

(VI) WHETHER A PEACE OFFICER UNHOLSTERED A WEAPON DURING THE INCIDENT;

(VII) WHETHER A PEACE OFFICER DISCHARGED A FIREARM DURING THE INCIDENT;

(VIII) WHETHER THE USE OF FORCE RESULTED IN A LAW ENFORCEMENT AGENCY INVESTIGATION AND THE RESULT OF THE INVESTIGATION; AND

(IX) WHETHER THE USE OF FORCE RESULTED IN A CITIZEN COMPLAINT AND THE RESOLUTION OF THAT COMPLAINT;

(b) ALL INSTANCES WHEN A PEACE OFFICER RESIGNED WHILE UNDER INVESTIGATION FOR VIOLATING DEPARTMENT POLICY;

(c) ALL DATA RELATING TO CONTACTS CONDUCTED BY ITS PEACE OFFICERS, INCLUDING:

(I) THE PERCEIVED DEMOGRAPHIC INFORMATION OF THE PERSON CONTACTED PROVIDED THAT THE IDENTIFICATION OF THESE CHARACTERISTICS IS BASED ON THE OBSERVATION AND PERCEPTION OF THE PEACE OFFICER MAKING THE CONTACT AND OTHER AVAILABLE DATA;

(II) WHETHER THE CONTACT WAS A TRAFFIC STOP;

(III) THE TIME, DATE, AND LOCATION OF THE CONTACT;

(IV) THE DURATION OF THE CONTACT;

(V) THE REASON FOR THE CONTACT;

(VI) THE SUSPECTED CRIME;

(VII) THE RESULT OF THE CONTACT, SUCH AS:

(A) NO ACTION, WARNING, CITATION, PROPERTY SEIZURE, OR ARREST;

(B) IF A WARNING OR CITATION WAS ISSUED, THE WARNING PROVIDED OR VIOLATION CITED;

(C) IF AN ARREST WAS MADE, THE OFFENSE CHARGED;

(D) IF THE CONTACT WAS A TRAFFIC STOP, THE INFORMATION COLLECTED, WHICH IS LIMITED TO THE DRIVER;

- (VIII)** THE ACTIONS TAKEN BY THE PEACE OFFICER DURING THE CONTACT, INCLUDING BUT NOT LIMITED TO WHETHER:
 - (A)** THE PEACE OFFICER ASKED FOR CONSENT TO SEARCH THE PERSON, AND, IF SO, WHETHER CONSENT WAS PROVIDED;
 - (B)** THE PEACE OFFICER SEARCHED THE PERSON OR ANY PROPERTY, AND, IF SO, THE BASIS FOR THE SEARCH AND THE TYPE OF CONTRABAND OR EVIDENCE DISCOVERED, IF ANY;
 - (C)** THE PEACE OFFICER SEIZED ANY PROPERTY AND, IF SO, THE TYPE OF PROPERTY THAT WAS SEIZED AND THE BASIS FOR SEIZING THE PROPERTY;
 - (D)** A PEACE OFFICER UNHOLSTERED A WEAPON DURING THE CONTACT; AND
 - (E)** A PEACE OFFICER DISCHARGED A FIREARM DURING THE CONTACT;
- (d)** ALL INSTANCES OF UNANNOUNCED ENTRY INTO A RESIDENCE, WITH OR WITHOUT A WARRANT, INCLUDING:
 - (I)** THE DATE, TIME, AND LOCATION OF THE USE OF UNANNOUNCED ENTRY;
 - (II)** THE PERCEIVED DEMOGRAPHIC INFORMATION OF THE SUBJECT OF THE UNANNOUNCED ENTRY, PROVIDED THAT THE IDENTIFICATION OF THESE CHARACTERISTICS IS BASED ON THE OBSERVATION AND PERCEPTION OF THE PEACE OFFICER MAKING THE ENTRY AND OTHER AVAILABLE DATA;
 - (III)** WHETHER A PEACE OFFICER UNHOLSTERED A WEAPON DURING THE UNANNOUNCED ENTRY; AND
 - (IV)** WHETHER A PEACE OFFICER DISCHARGED A FIREARM DURING THE UNANNOUNCED ENTRY.
- (3)** THE COLORADO STATE PATROL AND LOCAL LAW ENFORCEMENT AGENCIES SHALL NOT REPORT THE NAME, ADDRESS, SOCIAL SECURITY NUMBER, OR OTHER UNIQUE PERSONAL IDENTIFYING INFORMATION OF THE SUBJECT OF THE USE OF FORCE, VICTIM OF THE OFFICIAL MISCONDUCT, OR PERSONS CONTACTED, SEARCHED, OR SUBJECTED TO A PROPERTY SEIZURE. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE DATA REPORTED PURSUANT TO THIS SECTION IS AVAILABLE TO THE PUBLIC PURSUANT TO SUBSECTION (4) OF THIS SECTION.
- (4)** THE DIVISION OF CRIMINAL JUSTICE SHALL MAINTAIN A STATEWIDE DATABASE WITH DATA COLLECTED PURSUANT TO THIS SECTION, IN A SEARCHABLE FORMAT, AND PUBLISH THE DATABASE ON ITS WEBSITE.
- (5)** THE COLORADO STATE PATROL AND ANY LOCAL LAW ENFORCEMENT AGENCY THAT FAILS TO MEET ITS REPORTING REQUIREMENTS PURSUANT

TO THIS SECTION IS SUBJECT TO THE SUSPENSION OF ITS FUNDING BY ITS APPROPRIATING AUTHORITY.

24-31-904. Revoke peace officer certification after conviction.

NOTWITHSTANDING ANY PROVISION OF LAW, IF ANY PEACE OFFICER IS CONVICTED OF OR PLEADS GUILTY OR NOLO CONTENDERE TO A CRIME INVOLVING THE UNLAWFUL USE OR THREATENED USE OF PHYSICAL FORCE, A CRIME INVOLVING THE FAILURE TO INTERVENE IN THE USE OF UNLAWFUL FORCE, OR IS FOUND CIVILLY LIABLE FOR THE USE OF UNLAWFUL PHYSICAL FORCE, OR IS FOUND CIVILLY LIABLE FOR FAILURE TO INTERVENE IN THE USE OF UNLAWFUL FORCE, THE P.O.S.T. BOARD SHALL PERMANENTLY REVOKE THE PEACE OFFICER'S CERTIFICATION. THE P.O.S.T. BOARD SHALL NOT, UNDER ANY CIRCUMSTANCES, REINSTATE THE PEACE OFFICER'S CERTIFICATION OR GRANT NEW CERTIFICATION TO THE PEACE OFFICER UNLESS THE PEACE OFFICER IS EXONERATED BY A COURT. THE P.O.S.T. BOARD SHALL RECORD EACH DECERTIFIED PEACE OFFICER IN THE DATABASE CREATED PURSUANT TO SECTION 24-31-303 (1)(r).

24-31-905. Prohibited law enforcement action in response to protests.

- (1) IN RESPONSE TO A PROTEST OR DEMONSTRATION, A LAW ENFORCEMENT AGENCY AND ANY PERSON ACTING ON BEHALF OF THE LAW ENFORCEMENT AGENCY SHALL NOT:
 - (a) DISCHARGE KINETIC IMPACT PROJECTILES AND ALL OTHER NON- OR LESS-LETHAL PROJECTILES IN A MANNER THAT TARGETS THE HEAD, PELVIS, OR BACK;
 - (b) DISCHARGE KINETIC IMPACT PROJECTILES INDISCRIMINATELY INTO A CROWD; OR
 - (c) USE CHEMICAL AGENTS OR IRRITANTS, INCLUDING PEPPER SPRAY AND TEAR GAS, PRIOR TO ISSUING AN ORDER TO DISPERSE IN A SUFFICIENT MANNER TO ENSURE THE ORDER IS HEARD AND REPEATED IF NECESSARY, FOLLOWED BY SUFFICIENT TIME AND SPACE TO ALLOW COMPLIANCE WITH THE ORDER.

SECTION 3. In Colorado Revised Statutes, add *13-21-131* as follows:

13-21-131. Civil action for deprivation of rights — definition.

- (1) A PEACE OFFICER, AS DEFINED IN SECTION 24-31-901 (3), EMPLOYED BY A LOCAL GOVERNMENT WHO, UNDER COLOR OF LAW, SUBJECTS OR CAUSES TO BE SUBJECTED, INCLUDING FAILING TO INTERVENE, ANY OTHER PERSON TO THE DEPRIVATION OF ANY INDIVIDUAL RIGHTS THAT CREATE BINDING OBLIGATIONS ON GOVERNMENT ACTORS SECURED BY THE BILL OF RIGHTS, ARTICLE II OF THE STATE CONSTITUTION, IS LIABLE TO THE INJURED PARTY FOR LEGAL OR EQUITABLE RELIEF OR ANY OTHER APPROPRIATE RELIEF.
- (2)

- (a) STATUTORY IMMUNITIES AND STATUTORY LIMITATIONS ON LIABILITY, DAMAGES, OR ATTORNEY FEES DO NOT APPLY TO CLAIMS BROUGHT PURSUANT TO THIS SECTION. THE “COLORADO GOVERNMENTAL IMMUNITY ACT”, ARTICLE 10 OF TITLE 24, DOES NOT APPLY TO CLAIMS BROUGHT PURSUANT TO THIS SECTION.
- (b) QUALIFIED IMMUNITY IS NOT A DEFENSE TO LIABILITY PURSUANT TO THIS SECTION.
- (3) IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION, A COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO A PREVAILING PLAINTIFF. IN ACTIONS FOR INJUNCTIVE RELIEF, A COURT SHALL DEEM A PLAINTIFF TO HAVE PREVAILED IF THE PLAINTIFF’S SUIT WAS A SUBSTANTIAL FACTOR OR SIGNIFICANT CATALYST IN OBTAINING THE RESULTS SOUGHT BY THE LITIGATION. WHEN A JUDGMENT IS ENTERED IN FAVOR OF A DEFENDANT, THE COURT MAY AWARD REASONABLE COSTS AND ATTORNEY FEES TO THE DEFENDANT FOR DEFENDING ANY CLAIMS THE COURT FINDS FRIVOLOUS.
- (4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PEACE OFFICER’S EMPLOYER SHALL INDEMNIFY ITS PEACE OFFICERS FOR ANY LIABILITY INCURRED BY THE PEACE OFFICER AND FOR ANY JUDGMENT OR SETTLEMENT ENTERED AGAINST THE PEACE OFFICER FOR CLAIMS ARISING PURSUANT TO THIS SECTION; EXCEPT THAT, IF THE PEACE OFFICER’S EMPLOYER DETERMINES THAT THE OFFICER DID NOT ACT UPON A GOOD FAITH AND REASONABLE BELIEF THAT THE ACTION WAS LAWFUL, THEN THE PEACE OFFICER IS PERSONALLY LIABLE AND SHALL NOT BE INDEMNIFIED BY THE PEACE OFFICER’S EMPLOYER FOR FIVE PERCENT OF THE JUDGMENT OR SETTLEMENT OR TWENTY-FIVE THOUSAND DOLLARS, WHICHEVER IS LESS. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, IF THE PEACE OFFICER’S PORTION OF THE JUDGMENT IS UNCOLLECTIBLE FROM THE PEACE OFFICER, THE PEACE OFFICER’S EMPLOYER OR INSURANCE SHALL SATISFY THE FULL AMOUNT OF THE JUDGMENT OR SETTLEMENT. A PUBLIC ENTITY DOES NOT HAVE TO INDEMNIFY A PEACE OFFICER IF THE PEACE OFFICER WAS CONVICTED OF A CRIMINAL VIOLATION FOR THE CONDUCT FROM WHICH THE CLAIM ARISES.
- (5) A CIVIL ACTION PURSUANT TO THIS SECTION MUST BE COMMENCED WITHIN TWO YEARS AFTER THE CAUSE OF ACTION ACCRUES.

SECTION 4. In Colorado Revised Statutes, *18-1-703*, amend (1) introductory portion and (1)(b) as follows:

18-1-703. Use of physical force — special relationships.

- (1) The use of physical force upon another person ~~which~~ **THAT** would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:
 - (b) A superintendent or other authorized official of a jail, prison, or correctional institution may, in order to maintain order and discipline, use **OBJECTIVELY** reasonable and

appropriate physical force when and to the extent that he OR SHE reasonably believes it necessary to maintain order and discipline, but he OR SHE may use deadly physical force only when he OR SHE OBJECTIVELY reasonably believes ~~it necessary to prevent death or serious bodily injury~~ THE INMATE POSES AN IMMEDIATE THREAT TO THE PERSON USING DEADLY FORCE OR ANOTHER PERSON.

SECTION 5. In Colorado Revised Statutes, 18-1-707, repeal and reenact, with amendments, (1), (2), (2.5), (3), and (4); and add (4.5) as follows:

18-1-707. Use of force by peace officers — definition.

(1) PEACE OFFICERS, IN CARRYING OUT THEIR DUTIES, SHALL APPLY NONVIOLENT MEANS, WHEN POSSIBLE, BEFORE RESORTING TO THE USE OF PHYSICAL FORCE. A PEACE OFFICER MAY USE PHYSICAL FORCE ONLY IF NONVIOLENT MEANS WOULD BE INEFFECTIVE IN EFFECTING AN ARREST, PREVENTING AN ESCAPE, OR PREVENTING AN IMMINENT THREAT OF SERIOUS BODILY INJURY OR DEATH TO THE PEACE OFFICER OR ANOTHER PERSON.

(2) WHEN PHYSICAL FORCE IS USED, A PEACE OFFICER SHALL:

- (a) NOT USE DEADLY PHYSICAL FORCE TO APPREHEND A PERSON WHO IS SUSPECTED OF ONLY A MINOR OR NONVIOLENT OFFENSE;
- (b) USE ONLY A DEGREE OF FORCE CONSISTENT WITH THE MINIMIZATION OF INJURY TO OTHERS;
- (c) ENSURE THAT ASSISTANCE AND MEDICAL AID ARE RENDERED TO ANY INJURED OR AFFECTED PERSONS AS SOON AS PRACTICABLE; AND
- (d) ENSURE THAT ANY IDENTIFIED RELATIVES OR NEXT OF KIN OF PERSONS WHO HAVE SUSTAINED SERIOUS BODILY INJURY OR DEATH ARE NOTIFIED AS SOON AS PRACTICABLE.

(2.5)

(a) A PEACE OFFICER IS PROHIBITED FROM USING A CHOKEHOLD UPON ANOTHER PERSON.

(b)

(I) FOR THE PURPOSES OF THIS SUBSECTION (2.5), “CHOKEHOLD” MEANS A METHOD BY WHICH A PERSON APPLIES SUFFICIENT PRESSURE TO A PERSON TO MAKE BREATHING DIFFICULT OR IMPOSSIBLE AND INCLUDES BUT IS NOT LIMITED TO ANY PRESSURE TO THE NECK, THROAT, OR WINDPIPE THAT MAY PREVENT OR HINDER BREATHING OR REDUCE INTAKE OF AIR.

(II) “CHOKEHOLD” ALSO MEANS APPLYING PRESSURE TO A PERSON’S NECK ON EITHER SIDE OF THE WINDPIPE, BUT NOT TO THE WINDPIPE ITSELF, TO STOP THE FLOW OF BLOOD TO THE BRAIN VIA THE CAROTID ARTERIES.

- (3) A PEACE OFFICER IS JUSTIFIED IN USING DEADLY PHYSICAL FORCE TO MAKE AN ARREST ONLY WHEN ALL OTHER MEANS OF APPREHENSION ARE UNREASONABLE GIVEN THE CIRCUMSTANCES AND:
 - (a) THE ARREST IS FOR A FELONY INVOLVING CONDUCT INCLUDING THE USE OR THREATENED USE OF DEADLY PHYSICAL FORCE;
 - (b) THE SUSPECT POSES AN IMMEDIATE THREAT TO THE PEACE OFFICER OR ANOTHER PERSON;
 - (c) THE FORCE EMPLOYED DOES NOT CREATE A SUBSTANTIAL RISK OF INJURY TO OTHER PERSONS.
- (4) A PEACE OFFICER SHALL IDENTIFY HIMSELF OR HERSELF AS A PEACE OFFICER AND GIVE A CLEAR VERBAL WARNING OF HIS OR HER INTENT TO USE FIREARMS OR OTHER DEADLY PHYSICAL FORCE, WITH SUFFICIENT TIME FOR THE WARNING TO BE OBSERVED, UNLESS TO DO SO WOULD UNDULY PLACE PEACE OFFICERS AT RISK OF INJURY, WOULD CREATE A RISK OF DEATH OR INJURY TO OTHER PERSONS.
- (4.5) NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION, A PEACE OFFICER IS JUSTIFIED IN USING DEADLY FORCE IF THE PEACE OFFICER HAS AN OBJECTIVELY REASONABLE BELIEF THAT A LESSER DEGREE OF FORCE IS INADEQUATE AND THE PEACE OFFICER HAS OBJECTIVELY REASONABLE GROUNDS TO BELIEVE, AND DOES BELIEVE, THAT HE OR ANOTHER PERSON IS IN IMMINENT DANGER OF BEING KILLED OR OF RECEIVING SERIOUS BODILY INJURY.

SECTION 6. In Colorado Revised Statutes, 18-8-802, add (1.5) as follows:

18-8-802. Duty to report use of force by peace officers — duty to intervene.

(1.5)

- (a) A PEACE OFFICER SHALL INTERVENE TO PREVENT OR STOP ANOTHER PEACE OFFICER FROM USING PHYSICAL FORCE THAT EXCEEDS THE DEGREE OF FORCE PERMITTED, IF ANY, BY SECTION 18-1-707, IN PURSUANCE OF THE OTHER PEACE OFFICER'S LAW ENFORCEMENT DUTIES IN CARRYING OUT AN ARREST OF ANY PERSON, PLACING ANY PERSON UNDER DETENTION, TAKING ANY PERSON INTO CUSTODY, BOOKING ANY PERSON, OR IN THE PROCESS OF CROWD CONTROL OR RIOT CONTROL, WITHOUT REGARD FOR CHAIN OF COMMAND.
- (b)
 - (I) A PEACE OFFICER WHO INTERVENES AS REQUIRED BY SUBSECTION (1.5) (a) OF THIS SECTION SHALL REPORT THE INTERVENTION TO HIS OR HER IMMEDIATE SUPERVISOR.
 - (II) AT A MINIMUM, THE REPORT REQUIRED BY THIS SUBSECTION (1.5)(b) MUST INCLUDE THE DATE, TIME, AND PLACE OF THE OCCURRENCE; THE IDENTITY, IF KNOWN, AND DESCRIPTION OF THE PARTICIPANTS; AND A

DESCRIPTION OF THE INTERVENTION ACTIONS TAKEN. THIS REPORT SHALL BE MADE IN WRITING WITHIN TEN DAYS OF THE OCCURRENCE OF THE USE OF SUCH FORCE AND SHALL BE APPENDED TO ALL OTHER REPORTS OF THE INCIDENT.

- (c) A MEMBER OF A LAW ENFORCEMENT AGENCY SHALL NOT DISCIPLINE OR RETALIATE IN ANY WAY AGAINST A PEACE OFFICER FOR INTERVENING AS REQUIRED BY SUBSECTION (1.5) (a) OF THIS SECTION, OR FOR REPORTING UNCONSTITUTIONAL CONDUCT, OR FOR FAILING TO FOLLOW WHAT THE OFFICER REASONABLY BELIEVES IS AN UNCONSTITUTIONAL DIRECTIVE.
- (d) ANY PEACE OFFICER WHO FAILS TO INTERVENE TO PREVENT THE USE OF UNLAWFUL FORCE AS PRESCRIBED IN THIS SUBSECTION (1.5) COMMITS A CLASS 1 MISDEMEANOR. NOTHING IN THIS SUBSECTION (1.5) SHALL PROHIBIT OR DISCOURAGE PROSECUTION OF ANY OTHER CRIMINAL OFFENSE RELATED TO FAILURE TO INTERVENE, INCLUDING A HIGHER CHARGE, IF SUPPORTED BY THE EVIDENCE.
- (e) WHEN AN ADMINISTRATIVE LAW JUDGE OR INTERNAL INVESTIGATION FINDS THAT A PEACE OFFICER FAILED TO INTERVENE TO PREVENT THE USE OF UNLAWFUL PHYSICAL FORCE AS PRESCRIBED IN THIS SUBSECTION (1.5), THIS FINDING MUST BE PRESENTED TO THE DISTRICT ATTORNEY SO THAT HE OR SHE CAN DETERMINE WHETHER CHARGES SHOULD BE FILED PURSUANT TO SUBSECTION (1.5)(d) OF THIS SECTION. HOWEVER, NOTHING IN THIS SUBSECTION (1.5)(e) PROHIBITS THE DISTRICT ATTORNEY FROM CHARGING AN OFFICER WITH FAILURE TO INTERVENE BEFORE THE CONCLUSION OF ANY INTERNAL INVESTIGATION.
- (f) IN ADDITION TO ANY CRIMINAL LIABILITY AND PENALTY UNDER THE LAW, WHEN AN ADMINISTRATIVE LAW JUDGE HEARING OFFICER, OR INTERNAL INVESTIGATION FINDS THAT A PEACE OFFICER FAILED TO INTERVENE AS REQUIRED BY SUBSECTION (1.5)(a) OF THIS SECTION IN AN INCIDENT RESULTING IN SERIOUS BODILY INJURY OR DEATH TO ANY PERSON, THE PEACE OFFICER'S EMPLOYER SHALL SUBJECT THE PEACE OFFICER TO DISCIPLINE, UP TO AND INCLUDING TERMINATION, TO THE EXTENT PERMITTED BY APPLICABLE CONSTITUTIONAL AND STATUTORY PERSONNEL LAWS AND CASE LAW, AND THE P.O.S.T. BOARD SHALL PERMANENTLY DECERTIFY THE PEACE OFFICER UPON RECEIPT OF NOTICE OF THE PEACE OFFICER'S DISCIPLINE. THE REVOCATION MAY ONLY BE OVERTURNED IF THE PEACE OFFICER IS EXONERATED BY A COURT.
- (g) IN A CASE IN WHICH THE PROSECUTION CHARGES A PEACE OFFICER WITH OFFENSES RELATED TO AND BASED UPON THE USE OF EXCESSIVE FORCE BUT DOES NOT FILE CHARGES AGAINST ANY OTHER PEACE OFFICER OR OFFICERS WHO WERE AT THE SCENE DURING THE USE OF FORCE, THE DISTRICT ATTORNEY SHALL PREPARE A WRITTEN REPORT EXPLAINING THE DISTRICT ATTORNEY'S BASIS FOR THE DECISION NOT TO CHARGE ANY OTHER PEACE OFFICER WITH ANY CRIMINAL CONDUCT AND SHALL

PUBLICLY DISCLOSE THE REPORT TO THE PUBLIC; EXCEPT THAT IF DISCLOSURE OF THE REPORT WOULD SUBSTANTIALLY INTERFERE WITH OR JEOPARDIZE AN ONGOING CRIMINAL INVESTIGATION, THE DISTRICT ATTORNEY MAY DELAY PUBLIC DISCLOSURE FOR UP TO FORTY-FIVE DAYS. THE DISTRICT ATTORNEY SHALL POST THE WRITTEN REPORT ON ITS WEBSITE OR, IF IT DOES NOT HAVE A WEBSITE, MAKE IT PUBLICLY AVAILABLE UPON REQUEST. NOTHING IN THIS SECTION IS INTENDED TO PROHIBIT OR DISCOURAGE CRIMINAL PROSECUTION OF AN OFFICER WHO FAILED TO INTERVENE FOR CONDUCT IN WHICH THE FACTS SUPPORT A CRIMINAL CHARGE, INCLUDING UNDER A COMPLICITY THEORY, OR FOR AN INCHOATE OFFENSE.

SECTION 7. In Colorado Revised Statutes, *18-1-707*, add (10) as follows:

18-1-707. Use of physical force in making an arrest or in preventing an escape — definitions - repeal.

(10)

(a) EACH LAW ENFORCEMENT AGENCY IN THE STATE SHALL TRAIN ITS PEACE OFFICERS ON THE PROVISIONS OF SUBSECTIONS (1) TO (4.5) OF THIS SECTION, SECTION 18-1-703 (1)(b), AND SECTION 18-8-802 (1.5) AS ENACTED IN SENATE BILL 20-217, ENACTED IN 2020, PRIOR TO THE PROVISIONS BECOMING EFFECTIVE ON SEPTEMBER 1, 2020.

(b) THIS SUBSECTION (10) IS REPEALED, EFFECTIVE JANUARY 1, 2021.

SECTION 8. In Colorado Revised Statutes, *20-1-114*, amend (2) as follows:

20-1-114. Peace officer-involved death investigations — disclosure.

(2) If the district attorney refers the matter under investigation to the grand jury, the district attorney shall release a statement at the time the matter is referred to the grand jury disclosing the general purpose of the grand jury's investigation. If no true bill is returned, the grand jury ~~may~~ **SHALL** issue **AND PUBLISH** a report. ~~pursuant to section 16-5-205.5, C.R.S.~~

SECTION 9. In Colorado Revised Statutes, *24-31-101*, add (3) and (4) as follows:

24-31-101. Powers and duties of attorney general.

(3) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION TO ENFORCE THE PROVISIONS OF SECTION 24-31-113.

(4) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION TO ENFORCE THE PROVISIONS OF SECTION 24-31-307 (2) OR A CRIMINAL ACTION TO ENFORCE THE PROVISIONS OF SECTION 24-31-307 (3).

SECTION 10. In Colorado Revised Statutes, *24-31-303*, amend (1)(l), (1)(p), and (1)(q); and add (1)(r) as follows:

24-31-303. Duties — powers of the P.O.S.T. board.

(1) The P.O.S.T. board has the following duties:

- (l) To promulgate rules deemed necessary by the board concerning annual in-service training requirements for certified peace officers, including but not limited to evaluation of the training program and processes to ensure substantial compliance by law enforcement agencies, ~~and~~ departments, **AND INDIVIDUAL PEACE OFFICERS;**
- (p) To develop a community outreach program that informs the public of the role and duties of the P.O.S.T. board; ~~and~~
- (q) To develop a recruitment program that creates a diversified applicant pool for appointments to the P.O.S.T. board and the subject matter expertise committees; **AND**
- (r) **BEGINNING ON JANUARY 1, 2022, TO CREATE AND MAINTAIN A DATABASE CONTAINING INFORMATION RELATED TO A PEACE OFFICER’S:**
 - (I) UNTRUTHFULNESS;**
 - (II) REPEATED FAILURE TO FOLLOW P.O.S.T. BOARD TRAINING REQUIREMENTS;**
 - (III) DECERTIFICATION BY THE P.O.S.T. BOARD; AND**
 - (IV) TERMINATION FOR CAUSE.**

SECTION 11. In Colorado Revised Statutes, 24-4.1-302, add (2)(w) as follows:

24-4.1-302. Definitions.

As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(2) “Critical stages” means the following stages of the criminal justice process:

(w) A HEARING HELD PURSUANT TO SECTION 24-31-902 (2)(c).

SECTION 12. In Colorado Revised Statutes, 24-4.1-302.5, amend (1)(d)(VII) and (1)(d)(VIII); and add (1)(d)(IX) and (1)(j.8) as follows:

24-4.1-302.5. Rights afforded to victims — definitions.

(1) In order to preserve and protect a victim’s rights to justice and due process, each victim of a crime has the following rights:

(d) The right to be heard at any court proceeding:

(VII) Involving a subpoena for records concerning the victim’s medical history, mental health, education, or victim compensation, or any other records that are privileged pursuant to section 13-90-107; ~~C.R.S.; or~~

(VIII) Involving a petition for expungement as described in section 19-1-306; **OR**

(IX) INVOLVING A HEARING AS DESCRIBED IN SECTION 24-31-902 (2)(c).

(j.8)THE RIGHT, UPON REQUEST, TO OBTAIN ANY INCIDENT RECORDING AS DESCRIBED IN SECTION 24-31-902;

SECTION 13. In Colorado Revised Statutes, add 24-31-113 as follows:

24-31-113. Public integrity — patterns and practices.

IT IS UNLAWFUL FOR ANY GOVERNMENTAL AUTHORITY, OR ANY AGENT THEREOF, OR ANY PERSON ACTING ON BEHALF OF A GOVERNMENTAL AUTHORITY, TO ENGAGE IN A PATTERN OR PRACTICE OF CONDUCT BY PEACE OFFICERS OR BY OFFICIALS OR EMPLOYEES OF ANY GOVERNMENTAL AGENCY THAT DEPRIVES PERSONS OF RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED OR PROTECTED BY THE CONSTITUTION OR LAWS OF THE UNITED STATES OR THE STATE OF COLORADO. WHENEVER THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE ATTORNEY GENERAL, FOR OR IN THE NAME OF THE STATE OF COLORADO, MAY IN A CIVIL ACTION OBTAIN ANY AND ALL APPROPRIATE RELIEF TO ELIMINATE THE PATTERN OR PRACTICE. BEFORE FILING SUIT, THE ATTORNEY GENERAL SHALL NOTIFY THE GOVERNMENT AUTHORITY OR ANY AGENT THEREOF, AND PROVIDE IT WITH THE FACTUAL BASIS THAT SUPPORTS HIS OR HER REASONABLE CAUSE TO BELIEVE A VIOLATION OCCURRED. UPON RECEIPT OF THE FACTUAL BASIS, THE GOVERNMENT AUTHORITY, OR ANY AGENT THEREOF, HAS SIXTY DAYS TO CHANGE OR ELIMINATE THE IDENTIFIED PATTERN OR PRACTICE. IF THE IDENTIFIED PATTERN OR PRACTICE IS NOT CHANGED OR ELIMINATED AFTER SIXTY DAYS, THE ATTORNEY GENERAL MAY FILE A CIVIL LAWSUIT.

SECTION 14. In Colorado Revised Statutes, 24-31-305, add (2.7) as follows:

24-31-305. Certification — issuance — renewal — revocation — rules — definition.

(2.7)THE P.O.S.T. BOARD MAY REVOKE THE CERTIFICATION OF A PEACE OFFICER WHO FAILS TO SATISFACTORILY COMPLETE PEACE OFFICER TRAINING REQUIRED BY THE P.O.S.T. BOARD. PRIOR TO REVOKING THE PEACE OFFICER'S CERTIFICATION, THE P.O.S.T. BOARD SHALL NOTIFY THE PEACE OFFICER OF HIS OR HER FAILURE TO COMPLETE THE TRAINING REQUIRED BY THE P.O.S.T. BOARD AND GIVE THE PEACE OFFICER THIRTY CALENDAR DAYS TO SATISFACTORILY COMPLETE THE PEACE OFFICER TRAINING REQUIRED BY THE P.O.S.T. BOARD.

SECTION 15. In Colorado Revised Statutes, amend 24-31-307 as follows:

24-31-307. Enforcement.

- (1) The P.O.S.T. board shall have the power to ~~direct the attorney general to enforce the provisions of this part 3 through an action in district court for injunctive or other appropriate relief against~~ PROMULGATE RULES FOR ENFORCEMENT OF THIS PART 3.

(2) THE ATTORNEY GENERAL MAY ENFORCE THE PROVISIONS OF THIS PART 3 THROUGH AN ACTION IN DISTRICT COURT FOR INJUNCTIVE OR OTHER APPROPRIATE RELIEF AGAINST:

- (a) Any individual undertaking or attempting to undertake any duties as a peace officer or a reserve peace officer in this state in violation of this part 3; and
- (b) Any agency permitting any individual to undertake or attempt to undertake any duties as a peace officer or a reserve peace officer in this state under the auspices of such agency in violation of this part 3.

(3) THE ATTORNEY GENERAL MAY BRING CRIMINAL CHARGES FOR VIOLATIONS OF THIS PART 3 IF VIOLATION IS WILLFUL OR WANTON, OR IMPOSE FINES, AS SET IN P.O.S.T. BOARD RULE, UPON ANY INDIVIDUAL OFFICER OR AGENCY FOR FAILURE TO COMPLY WITH THIS PART 3 OR ANY RULE PROMULGATED UNDER THIS PART 3.

(2) (4) The attorney general shall be entitled to recover reasonable attorney fees and costs against the defendant in any enforcement action under this part 3, if the attorney general prevails.

SECTION 16. In Colorado Revised Statutes, 24-31-309, amend (4)(a); and add (3.5) as follows:

24-31-309. Profiling — officer identification — training.

(3.5) A PEACE OFFICER SHALL HAVE A LEGAL BASIS FOR MAKING A CONTACT, WHETHER CONSENSUAL OR NONCONSENSUAL, FOR THE PURPOSE OF ENFORCING THE LAW OR INVESTIGATING POSSIBLE VIOLATIONS OF THE LAW. AFTER MAKING A CONTACT, A PEACE OFFICER, AS DEFINED IN SECTION 24-31-901 (3), SHALL REPORT TO THE PEACE OFFICER'S EMPLOYING AGENCY:

- (a) THE PERCEIVED DEMOGRAPHIC INFORMATION OF THE PERSON CONTACTED, PROVIDED THAT THE IDENTIFICATION OF THESE CHARACTERISTICS IS BASED ON THE OBSERVATION AND PERCEPTION OF THE PEACE OFFICER MAKING THE CONTACT AND OTHER AVAILABLE DATA;
- (b) WHETHER THE CONTACT WAS A TRAFFIC STOP;
- (c) THE TIME, DATE, AND LOCATION OF THE CONTACT;
- (d) THE DURATION OF THE CONTACT;
- (e) THE REASON FOR THE CONTACT;
- (f) THE SUSPECTED CRIME;
- (g) THE RESULT OF THE CONTACT, SUCH AS:
 - (I) NO ACTION, WARNING, CITATION, PROPERTY SEIZURE, OR ARREST;
 - (II) IF A WARNING OR CITATION WAS ISSUED, THE WARNING PROVIDED OR VIOLATION CITED;
 - (III) IF AN ARREST WAS MADE, THE OFFENSE CHARGED;

- (IV) IF THE CONTACT WAS A TRAFFIC STOP, THE INFORMATION COLLECTED, WHICH IS LIMITED TO THE DRIVER;
- (h) THE ACTIONS TAKEN BY THE PEACE OFFICER DURING THE CONTACT, INCLUDING BUT NOT LIMITED TO WHETHER:
 - (I) THE PEACE OFFICER ASKED FOR CONSENT TO SEARCH THE PERSON, VEHICLE, OR OTHER PROPERTY, AND, IF SO, WHETHER CONSENT WAS PROVIDED;
 - (II) THE PEACE OFFICER SEARCHED THE PERSON OR ANY PROPERTY, AND, IF SO, THE BASIS FOR THE SEARCH AND THE TYPE OF CONTRABAND OR EVIDENCE DISCOVERED, IF ANY;
 - (III) THE PEACE OFFICER SEIZED ANY PROPERTY, AND, IF SO, THE TYPE OF PROPERTY THAT WAS SEIZED AND THE BASIS FOR SEIZING THE PROPERTY;
 - (IV) A PEACE OFFICER UNHOLSTERED A WEAPON DURING THE CONTACT; AND
 - (V) A PEACE OFFICER DISCHARGED A FIREARM DURING THE CONTACT.

(4)

- (a) A peace officer certified pursuant to this part 3 shall provide, without being asked, ~~his or her~~ THE PEACE OFFICER'S business card to any person whom the peace officer has detained in a traffic stop but has not cited or arrested. The business card ~~shall~~ MUST include identifying information about the peace officer, including but not limited to the peace officer's name, division, precinct, and badge or other identification number; ~~and~~ a telephone number that may be used, if necessary, to report any comments, positive or negative, regarding the traffic stop; AND INFORMATION ABOUT HOW TO FILE A COMPLAINT RELATED TO THE CONTACT. The identity of the reporting person and the report of any such comments that ~~constitutes~~ CONSTITUTE a complaint ~~shall~~ MUST initially be kept confidential by the receiving law enforcement agency, to the extent permitted by law. The receiving law enforcement agency shall be permitted to obtain some identifying information regarding the complaint to allow initial processing of the complaint. If it becomes necessary for the further processing of the complaint for the complainant to disclose ~~his or her~~ THE COMPLAINANT'S identity, the complainant shall do so or, at the option of the receiving law enforcement agency, the complaint may be dismissed.

SECTION 17. Appropriation.

- (1) For the 2020-21 state fiscal year, \$617,478 is appropriated to the department of public safety for use by the Colorado state patrol. This appropriation is from the highway users tax fund created in *section 43-4-201 (1)(a), C.R.S.* To implement this act, the patrol may use this appropriation as follows:
 - (a) \$50,288 for civilians, which amount is based on an assumption that the patrol will require an additional 1.0 FTE;

- (b) \$7,550 for operating expenses;
- (c) \$463,700 for information technology asset maintenance; and
- (d) \$95,940 for the purchase of legal services.

(2) For the 2020-21 state fiscal year, \$95,940 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of public safety under subsection (1)(d) of this section and is based on an assumption that the department of law will require an additional 0.5 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of public safety.

SECTION 18. Effective date.

This act takes effect upon passage; except that:

- (1) *Section 24-31-902, Colorado Revised Statutes*, as enacted in section 2 of this act, takes effect July 1, 2023;
- (2) Section 4 of this act takes effect September 1, 2020; and
- (3) Section 5 of this act takes effect September 1, 2020; except that section 18-1-707 (2.5) and (3), *Colorado Revised Statutes*, as enacted in section 5 of this act, takes effect upon passage.

SECTION 19. Safety clause.

The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

History

Approved by the Governor June 19, 2020

Effective date: June 19, 2020

Sponsor

BY SENATOR(S) Garcia and Fields, Fenberg, Williams A., Gonzales, Moreno, Rodriguez, Bridges, Danielson, Donovan, Foote, Ginal, Hansen, Lee, Pettersen, Story, Todd, Winter, Zenzinger, Coram, Crowder, Hill, Holbert, Priola, Tate; also REPRESENTATIVE(S) Herod and Gonzales-Gutierrez, Garnett, Buckner, Coleman, Exum, Jackson, Melton, Benavidez, Buentello, Caraveo, Duran, Jaquez Lewis, Tipper, Valdez A., Valdez D., Arndt, Becker, Bird, Cutter, Esgar, Froelich, Gray, Hooton, Kennedy, Kipp, Kraft-Tharp, Lontine, McCluskie, McLachlan, Michaelson Jenet, Mullica, Roberts, Singer, Sirota, Snyder, Sullivan, Titone, Weissman, Woodrow, Young, Landgraf.

COLORADO ADVANCE LEGISLATIVE SERVICE
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2020: A Moment of Reckoning and a Call for Collective Intersectional Action in the Fight Against Tyranny

By Mari Newman

It is easy to conclude that 2020 has been a shocking dumpster fire of a year. In many ways, it has. The terror and rapid spread of an airborne virus that continues to disproportionately impact communities of color,¹ the unemployment of hundreds of thousands of Americans, particularly those who are women, Black, LatinX, Asian, and Indigenous,² and a newfound recognition of the lives of countless Black and Brown people lost to police brutality and hatred³ have sparked nationwide and global protest.⁴ Peaceful protest has been met with repression,⁵ the media is under attack,⁶ and the foundational principles of our democratic system are in peril.⁷

But 2020 did not arise in a vacuum. All of these developments are the foreseeable consequence of decades—even centuries—of festering institutional discrimination, class warfare, divestment from education and other social services, and the militarization of law enforcement.⁸ They are products of a system built on the foundation of structural inequality and its preservation.⁹ Until recently, it appeared that this flawed structure was being slowly dismantled, but the current administration has fortified it through persistent attacks on our civil rights.

Wishful thinkers anticipated that, having now suffered nearly four years of a regime bent on reversing decades of progress, an overwhelming majority of Americans would forcefully reject the oppressive policies and rhetoric that the Trump administration revealed as the true colors of the modern Republican Party. Instead, vast swaths of the country voted to retain the most authoritarian leader this country has ever known, and to solidify the Party's hold on power with the retention of its most retrograde and influential members in the Senate and increased representation in the House.¹⁰ Perhaps not surprisingly, voters who supported this regressive agenda were overwhelmingly White,¹¹ apparently elevating their own self-interest over the good of the nation.

But if democracy is to survive, we must tear down these systems of oppression and rebuild a new structure through

collective, intersectional¹² action, lest we succumb to the forces of tyranny that are increasingly taking hold.

Civil Rights Advances, Hard Fought and Won (But Fleeting)

Just a few short years ago, it seemed like our nation was turning a corner. We overcame a monumental racial barrier by electing our first Black president.¹³ We also saw significant and tangible advances in the rights of women, immigrants, those with disabilities, those in poverty, the LGBTQ community, people of color, and other disenfranchised groups.¹⁴

For example, all working women gained legal protections with the passage of the Lilly Ledbetter Fair Pay Act, which increased the viability of pay-based sex discrimination claims, including those of Black, Indigenous, and LatinX women who continue to suffer greater pay disparities than their White and Asian counterparts.¹⁵ Likewise, the reauthorization of the Violence Against Women Act and new guidance under Title IX increased protections for women and members of the LGBTQ community.¹⁶

In immigrant communities, the Deferred Action for Childhood Arrivals program (DACA) granted hundreds of thousands of undocumented immigrants of different races, sexual orientations, gender identities, income levels, and national origins, the ability to attend and graduate from college, work jobs, launch careers and businesses, and become homeowners in the country they consider home.¹⁷

Within the disability community, the Year of Community Living Initiative provided new housing vouchers through the federal department of Housing and Urban Development for individuals with disabilities, which particularly benefitted those with lower incomes and people of color.¹⁸ Executive Order 13548 increased employment opportunities for people with disabilities in federal jobs, and the 2014 Workforce Innovation and Opportunity Act gave people with disabilities access to services that would allow them to obtain competitive employment.¹⁹

We also saw tremendous, cross-sectional gains for people of color. The Affordable Care Act allowed at least three million more Black Americans to receive health care, and the uninsured rate in Hispanic adults and Asian Americans lowered by over 25% and 11%, respectively.²⁰ Universal health care coverage especially benefitted children, people with disabilities, women, the LGBTQ community, and the elderly. We also saw the expansion of Head Start, an early education program that serves a significant number of Black and Brown children.²¹ And our federal judiciary became significantly more diverse with the appointment of several judges of color,²² particularly Justice Sonia Sotomayor, the nation's first Latina Supreme Court justice.²³

Advances for the LGBTQ community were particularly remarkable and intersectional. Through persistent and collective advocacy, LGBTQ people went from being criminals to enjoying marriage equality, benefitting members of the LGBTQ community who were also women, disabled, and people of color.²⁴ With the repeal of Don't Ask, Don't Tell, members of the LGBTQ community could come out of the shadows and openly express their identities without fear of dismissal from the armed forces.²⁵ And in 2009, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act went into effect, extending federal hate crimes law to include prosecution for attacks based on a victim's actual or perceived sexual orientation or gender identity.²⁶ These advances particularly helped racially diverse LGBTQ people who often benefit most from the economic benefits that accompany the legal status of marriage, are more likely to be members of the armed forces, and are most likely to be the targets of hate crimes.

We also saw meaningful criminal justice reform. The Fair Sentencing Act

reduced the disparities between penalties for crack cocaine and powder cocaine convictions, which disproportionately punished Black Americans.²⁷ The Supreme Court ruled that mandatory life-without-parole sentences were unconstitutional for children 17 or younger convicted of homicide, sentences that also disproportionately impacted children of color.²⁸ State and local law enforcement received \$20 million in grants to increase the use of body-worn cameras, a practice that effectively monitors police officers' excessive force.²⁹

The Rise of Tyranny and the Stripping of Rights

With such significant steps in the right direction, regression seemed unlikely. Yet, just as we were on the precipice of electing our nation's first woman president,³⁰ a candidate who promised to continue down the road toward equality,³¹ the election revealed pernicious themes of racism, homophobia, transphobia, misogyny, and xenophobia that were festering just below the surface, unleashing a politics of fear and repression.³²

The last four years reveal how quickly tyranny can gain traction in a democracy with compromised roots. Every vulnerable population—people of color, immigrants, people with disabilities, women, and those who are LGBTQ—has been under direct attack, even suffering the reversal of hard-fought rights. Those who fall into more than one of these categories have experienced the most oppression.

The government's response to the police killings of Black Americans is the paradigmatic example of the unleashing of a politics of fear and repression. As protests erupted over deaths caused by police brutality and hatred—like the murders of George Floyd, Elijah McClain, Breonna Taylor, De'Von Bailey, Rayshard Brooks, Tony McDade,

Andres Guardado, Trayford Pellerin, and Daniel Prude, to name a few³³—the government has deployed coded, racially charged “law and order” rhetoric and statements advocating violence towards those taken into custody and those exercising the right to speak against injustice.³⁴ While the vast majority of Black Lives Matter protests have been peaceful and nonviolent, many have been falsely characterized as violent insurrections and the source of rampant looting that warrant a swift militaristic response, and the administration has encouraged vigilante violence by White supremacists.³⁵ These intentional mischaracterizations and calls for state-sponsored violence have disproportionately targeted Black and Brown people, reminding us of the uncomfortable roots of our police forces as agents of White supremacy hired to capture people who tried to escape from slavery.³⁶ But the negative impact of the government's false or exaggerated assertions of violence by protesters was not merely theoretical; it effectively drove many White voters to support candidates who played on their fear of unrest encroaching on their communities.³⁷

And the persistent effort to reverse the course of progress does not stop there. The LGBTQ community has been the target of some of the most concerted rollback efforts of the past four years. On January 20, 2017, within two hours of being sworn into office, the Trump administration sought to erase the LGBTQ community completely, deleting any mention of LGBTQ issues from the White House, Department of State, and Department of Labor websites.³⁸ In the following months, the Department of Education reversed the Office for Civil Rights' approach to investigating civil rights complaints, negating protections for LGBTQ students. The previous Title

IX guidance that protected LGBTQ students who experience sexual harassment and assault on campuses was repealed,³⁹ and despite the United States Supreme Court's July 2020 ruling in *Bostock v. Clayton County* holding that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sexual orientation and gender identity, on September 8, 2020, the administration filed a brief with Indiana Supreme Court supporting a school's alleged right to fire a teacher for being gay.⁴⁰ Further, the Pentagon banned transgender people from military service and the Trump administration has continued to reiterate its commitment to that position, despite the fact that a majority of active-duty military service members support serving alongside transgender personnel.⁴¹

Unsurprisingly, Americans' election of a president who openly boasted of sexually assaulting women (in addition to brazenly degrading every other marginalized group) has resulted in the curtailment of women's rights, too. A president who himself faced multiple allegations of sexual misconduct went on to appoint a Supreme Court justice who was the subject of credible rape allegations.⁴² And, in an unabashed power grab, the Republican Party has now installed another justice who is openly hostile to women's rights to control their own reproductive health decisions, effectively calling into question the continuing viability of decades of Supreme Court precedent.⁴³ With the new composition of the Supreme Court, the political right's incremental efforts to control women's bodies, like the recent reinstatement and enforcement of the "Gag Rule" banning health professionals who provide care through the Title X program from discussing all health options with their patients,⁴⁴ will take on new force. There was also an erosion of women's rights as workers.

For example, the administration repealed the Fair Pay and Safe Workplaces Executive Order, making it easier for federal contractors with chronic violations of sex discrimination laws to continue to receive federal funding, and the administration delayed the previous administration's overtime rule, which would have given 3.2 million women the right to overtime pay, specifically benefitting single mothers and women of color.⁴⁵

With a campaign focused on building a wall on the country's southern border, the administration's attack on immigrants was equally foreseeable. Once in office, the administration ordered an increase in workplace immigration raids,⁴⁶ and signed into law Executive Order 13769, known as the Muslim ban, which circumscribed immigration from majority-Muslim countries.⁴⁷ In 2017, it also attempted to phase out DACA, triggering lawsuits and protests across the nation.⁴⁸ The Court stepped in, ruling that the administration's rationale was arbitrary and capricious.⁴⁹ Yet, the Republican-controlled administration continued its assault on immigrants. That same year, it instituted a zero-tolerance policy, aimed at criminally prosecuting those who entered illegally at the southern border. In implementing the policy, the administration ruthlessly and indefinitely separated children from their families; to this day, hundreds of these children may never see their parents again, as the government has no idea where those parents are.⁵⁰ The callous policy created a disaster with unthinkable consequences for hundreds of families who will never be reunited.

And there is more. Under this Republican administration, the Department of Health and Human Services decreased protections under the Affordable Care Act, allowing for deductible increases and removing the requirement that insurers provide in-network providers

who serve low-income communities.⁵¹ The impact of such measures has sweeping harms, disproportionately impacting people of color, low-income individuals, transgender people, and people with disabilities.⁵² The Supreme Court—now leaning heavily conservative with the installation of three Trump appointees, confirmed by a Republican-controlled Senate—is currently revisiting the constitutionality of the Affordable Care Act in a challenge brought by a group of Texas-based Republicans with the support of the Trump Administration.⁵³ A ruling that holds the Act unconstitutional will cost at least 20 million Americans health care coverage, invariably causing the most devastating impact on those who fall within multiple marginalized groups.⁵⁴ In the wake of a global pandemic, the effect of coverage reduction is particularly damaging for Indigenous, Black, LatinX, and Asian communities, which have been hit the hardest.⁵⁵ Black Americans have contracted COVID-19 at a rate nearly three times higher than Whites, and the early death rate in Black counties was six times higher than the rate in predominantly White counties.⁵⁶ LatinX people were also disproportionately impacted; for example, in California, LatinX people represent 74% of all COVID-19 deaths for people between the ages of 35-49, despite comprising only 41% of the population.⁵⁷ "Nationally, age-adjusted hospitalization rates for COVID-19 are approximately 5-times higher for [Native Americans], Alaska natives, and Blacks, and four times higher for LatinX persons, compared with non-Hispanic White persons."⁵⁸ In states where Asians amounted to at least 5% of the population, their deaths by COVID-19 were roughly three times that of their population percentage.⁵⁹ Moreover, the administration's lackluster response to the coronavirus has caused unemployment to skyrocket, especially impacting

Black, Brown, and Asian workers and business owners.⁶⁰

The impact of regressive policies driven by the political right has been worst for those who fall into multiple classes, who stand at the intersection of several vulnerable groups. For example, the Department of Housing and Urban Development reversed an Obama-era rule that required homeless shelters to house transgender people according to their gender identities, targeting those who are poor and LGBTQ.⁶¹ A Republican-controlled Federal Commission on School Safety also rolled back Obama-era guidance on school discipline aimed at protecting Black students from disparately severe punishment, which disproportionately impacts Black students with disabilities who are often subject to discipline due to disability-related conduct.⁶² During the peak of the coronavirus, the Environmental Protection Agency suspended regulatory enforcement, setting a framework for air and water pollution to increase in poor communities, exacerbating underlying health conditions that make Black and Brown people more vulnerable to coronavirus infections.⁶³ And, as a result of COVID-19 and racist and xenophobic sentiment fueled by the Trump administration, Asians have seen a massive spike in hate crimes and harassment.⁶⁴ Similarly, the right wing's anti-LGBTQ stance has created an especially dangerous climate of hate-driven violence toward Black trans people; this year, in a matter of nine days, six Black trans women were found dead: Brayla Stone, Merci Mack, Shakiie Peters, Draya McCarty, Tatiana Hall, and Bree Black, demonstrating the devaluation of Black, trans, and women's lives.⁶⁵ Undeterred, and unapologetic for his continual assaults on equality (or even civility), Trump recently signed an executive order banning diversity training for federal contractors,

appearing either oblivious or in opposition to much of corporate America's current commitment to discussing and combatting racism and other forms of discrimination.⁶⁶

Tyranny has also aimed at our most sacred civic and fundamental rights. The freedom of the press is at risk, as the Trump administration repeatedly questions the truthfulness of the media, creating a climate of distrust toward fact-checked news, even filing libel lawsuits against established and reputable news outlets including The New York Times, The Washington Post, and CNN.⁶⁷ In an unseemly effort to maintain its grip on power, the Republican Party engaged in multiple forms of voter suppression, including voter purges, strict voter ID requirements, voter intimidation, poll closures, long lines, inadequate disability parking, malfunctioning voting equipment, disenfranchisement, and gerrymandering.⁶⁸ The impact of such suppression has often gone unchecked. In *Husted v. A. Philip Randolph Inst.*, for example, the Court condoned Ohio's process for purging voters.⁶⁹ In Florida and Georgia, absentee ballots were tossed out because signatures on the ballots did not perfectly match the signatures the states had on file.⁷⁰ Polling sites had inadequate parking and signage, and these forms of suppression often disparately impact people of color, lower-income groups, and those with disabilities.⁷¹ The fact that these efforts were ultimately unsuccessful in clinching the election does not make the Republican Party's concerted attempts to suppress the vote any less troubling.

As much as one may wish it to be true, it would be naïve to conclude that the election of Joe Biden and Kamala Harris marks the end of this nightmare. A sitting president who advocated for the imprisonment of his political rival and claimed **beginning in 2016** that

U.S. elections were "rigged"⁷² is now making good on his repeated declarations that he would not accept the election results and peacefully leave office if he were to lose.⁷³ After proclaiming himself victor before all of the votes had been counted,⁷⁴ Trump and his supporters have forwarded multiple baseless assertions of voter fraud or election irregularities that have caused many to distrust the electoral process and even question the outcome of the election.⁷⁵ More alarmingly, these damaging conspiracy theories are not limited to some fringe element of the Republican Party; most congressional Republicans have sided with Trump in refusing to acknowledge Joe Biden as the victor in the 2020 election, and urging him to continue to fight.⁷⁶ Republican Senate Majority Leader Mitch McConnell, and many other Republican stalwarts, have spoken in support of the administration's continual filing of meritless lawsuits based on unsubstantiated, conclusory allegations.⁷⁷ Ignoring the scant evidence of outcome-determinative election fraud or irregularities, the administration again looks to the courts as a means to undermine Americans' civil rights.

And alarmingly, the courts no longer serve as an independent third branch of government, as the Republican Party has successfully engaged in a remarkable tactical game of blocking judicial appointments during the Obama administration, creating the opportunity to appoint an unprecedented number of life-tenured federal judges during the Trump administration.⁷⁸ Our constitution did not anticipate that any one party would have such unfettered opportunity to shape the federal judiciary, but in seizing that power, the political right has turned our courts into a pseudo-legislature, acting as a weapon to oppose equality and the expressed will of the people.

It is no exaggeration to say that American democracy hangs in the balance. “Democracy is not a state, it is an act,”⁷⁹ and the current administration and much of the Republican Party is doing everything in its power to render that act impossible for those who challenge its grip on power.

Intersectional Power and a Collective Fight for Justice

Yet, the rampant rollbacks of the rights of multiple groups and the threat to our very democracy have fueled unprecedented collaborative action. Many are coming together, using intersectionality as a framework to meaningfully advocate for significant, cross-sectional and progressive change that brings greater visibility and equality for all marginalized groups. It is at this intersection where we are most powerful in fighting oppression and tyranny. As Black, lesbian, feminist, and civil rights warrior, Audre Lorde, put it, “There is no such thing as a single-issue struggle ... because we do not live single-issue lives.”⁸⁰

Perhaps the most striking example of the power of collective activism through an intersectional framework is the current rise of the Black Lives Matter (BLM) movement. For the first time, a majority of Americans of different racial, gender, and religious identities, support the movement, making it one of the most diverse civil and human rights movements in America.⁸¹ One reason for this overwhelming support is that BLM has been intersectional by design. Queer women of color founded the organization to target violence against **all** Black people, whether women, disabled, or transgender.⁸² In fact, BLM and Trans Lives Matter worked together, insisting that #BlackTransLivesMatter.⁸³

And in the wake of citizens shouting for the world to “Say his name” as a

rallying cry against the police brutality of Black men, in the last seven years through BLM, the African American Policy Forum (AAPF), and Center for Intersectionality and Social Policy Studies (CISPS), we now also hear shouts for the world to “Say HER name.”⁸⁴ They continue to cry for the world’s acknowledgment of the intersectional violence on women of color, even at this moment protesting the grand jury’s decision not to charge the officers who killed Breonna Taylor.⁸⁵

Intersectionally-minded protests have not solely focused on police brutality. Like all great movements, the #metoo movement, too, is intersectional.⁸⁶ Tarana Burke, a woman of color, was intent on exposing the intersectionality of sexual violence,⁸⁷ emphasizing her goal to remove the veil hiding the sexual violence that “the everyday woman, man, trans person, child[,] and disabled person” suffers.⁸⁸ Coined in 2006, the phrase “me too” gained traction in 2017 after it was tweeted by actress Alyssa Milano,⁸⁹ bringing to the forefront the harrowing reality of sexual violence endured by thousands of women, men, disabled, and transgender persons.⁹⁰ But the phrase “me too” could have easily been echoed many years prior in 1991, the year Anita Hill, a Black woman, put her career on the line to testify that she was sexually harassed by then-nominee, Justice Clarence Thomas.⁹¹ Her pleas about sexual violence at the hands of her boss were not taken seriously before the Senate Judiciary Committee, as Joe Biden, the current President-Elect and then chair of the committee, now openly admits.⁹² Times have changed. Now, the #metoo movement has brought that conversation to the forefront, publicly exposing prominent men who commit sexual violence.⁹³

The success of the #metoo movement fits within a broader historical theme that recognizes the unmistakable

presence of intersectionality and intersectional power in social movements. Black women like Ida B. Wells, Mary Church Terrell, Lille Mae Bradford, Rosa Parks, Pauli Murray, and Ella Baker were at the forefront of both the suffrage and the Civil Rights Movements.⁹⁴ Many LGBTQ women of color, like Marsha P. Johnson, Sylvia Rivera, Miss Major, and Stormé DeLarverie, spearheaded the revolutionary 1969 Stonewall riots that were foundational to the past half-century of growth in LGBTQ rights.⁹⁵ Our progress is owed to the action and courage of these leaders who, in spite of the compounded forms of systemic oppression they faced, dedicated (and risked) their lives to the fight for equality for all disenfranchised people.

The momentum they started continues to propel us. Even now, as the political right is doing its best to erase marginalized groups, the cultural shift toward equality and acceptance has so taken hold that, in the last ten years, 21 states prohibit transgender-based exclusions in health care coverage,⁹⁶ 50 states and five territories allow same-sex marriages,⁹⁷ 21 states and one territory have laws forbidding bullying based on sexual orientation or gender identity,⁹⁸ and the Supreme Court recently held in *Bostock v. Clayton County* that employment discrimination based on sex must be understood to also prohibit discrimination based on sexual orientation and gender identity.⁹⁹

That same momentum has propelled unprecedented worldwide protests against police brutality and advocacy for legislative reform.¹⁰⁰ Several cities, states, and nations have banned the use of neck restraints by police.¹⁰¹ Here in Colorado, the legislature this year passed SB 217, which has been credited as one of the most sweeping police reform bills in the nation.¹⁰²

We also see intersectional disability activists like Vilissa K. Thompson of Ramp Your Voice¹⁰³ and the election of the first Indian and African-American Vice President.¹⁰⁴ Senator Harris's election was due, in no small part, to the collective cry for Joe Biden to nominate a Black woman.¹⁰⁵

Last, but certainly not least, a variety of diverse coalitions worked relentlessly to get out the vote this election and fight one of the greatest threats to our democracy—voter suppression. But credit is owed where credit is due: Black women, organizers, and voters (shout-out and standing ovation to Stacey Abrams) turned key states like Georgia blue,¹⁰⁶ and this election victory would not have been possible without the tireless advocacy and activism of Black communities.¹⁰⁷

Thus, as our nation battles intense division and inequality, we are collectively moving forward. And today, as in the past, using intersectional frameworks to raise the voices of those most affected allows us to make the most meaningful progress.

But there is no room for complacency.

Fight the Painful Truths of 2020 with "Good Trouble"¹⁰⁸

The events of 2020—the division, display of inequity and hatred, erupting protests, civil unrest, and attacks on the foundations of our democratic society—were not abrupt and unforeseeable lightning strikes that suddenly awakened us to the realities of a storm. Rather, 2020 was the predictable consequence of centuries of choices that enshrined and supported a system based on structural inequality.

2020 is not the worst year ever; 2020 is a wakeup call. It is a moment of reckoning. It is a call to action, reminding us of our shared duty to actively speak out against **all** forms of

discrimination—homophobia, transphobia, racism, sexism, ableism, and xenophobia. And for those in positions of privilege, the obligation is even more acute. As Audre Lorde warned us: "Your silence will not protect you."¹⁰⁹

The Biden/Harris win is undoubtedly a major victory for democracy and the marginalized communities whose lives and rights are constantly under threat by Trump and his administration. But Trump's electoral loss does not change the fact that 70+ million Americans voted in favor of a candidate—and a Republican Party—with a proven track record of discriminatory action and support of White supremacy.¹¹⁰ Rather, the election laid bare the depth and persistence of American racism, sexism, homophobia, transphobia, ableism, and xenophobia, and a stunning willingness to tolerate (or even celebrate) overt acts of dishonesty, brutality, and oppression in support of a system that is based on exploitation and dominance. The real work of tearing down the structures of inequality and rebuilding from the ground up is just beginning.

2020 urges us to stand up against discrimination, police brutality, income inequality, voter suppression, and attacks on free speech. These systems oppress us all, and we rise and fall together. Speak out, speak up, and join hands.

As civil rights giant and former Congressman John Lewis said:

Ordinary people with extraordinary vision can redeem the soul of America by getting in what I call good trouble, necessary trouble.... Now it is [our] turn to let freedom ring.¹¹¹ ▲▲▲

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This article was written with the help of an outstanding law student intern. Illustrating the chilling effect of current government attacks on free speech, that student has asked not to be credited as a co-author out of fear that they will face challenges being admitted to the bar in the deep-red state where they hope to practice civil rights law after graduation.

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³ BBC News, *Breonna Taylor: Timeline of Black Deaths Caused by Police*, BBC.COM, (Sept. 23, 2020), <https://www.bbc.com/news/world-us-canada-52905408>; Sarah Moon, *Independent Autopsy Shows Dijab Kizzee Was Struck 15 Times By LA Sheriff's Deputies, According to Family Attorneys*, CNN.COM, (Sept. 23, 2020,

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⁵ See *infra* note 35.

⁶ See *infra* note 67.

⁷ See *infra* notes 61-72.

⁸ Ian Thomsen, *The Research Is Clear: White People Are Not More Likely Than Black People To Be Killed By Police*, NORTHEASTERN.EDU (July 26, 2020), <https://news.northeastern.edu/2020/07/16/the-research-is-clear-white-people-are-not-more-likely-than-black-people-to-be-killed-by-police/>; see also Smithsonian Magazine, *158 Resources To Understand Racism In America*, SMITHSONIANMAG.COM (June 4, 2020, 11:47 AM), <https://www.smithsonianmag.com/history/158-resources-understanding-systemic-racism-america-180975029/>; Nsikan Akpan, *Police Militarization Fails to Protect Officers and Targets Black Communities, Study Finds*, PBS.ORG (Aug. 21, 2018, 12:40 PM), <https://www.pbs.org/newshour/science/police-militarization-fails-to-protect-officers-and-targets-black-communities-study-finds>; Kelly McLaughlin, *States Have Divested in Public Education Since the Recession, Making It Nearly Impossible for Teachers to Support Their Students and Classrooms*, INSIDER.COM (Nov. 16, 2018, 3:55 PM), <https://www.insider.com/public-education-divestment-has-occurred-since-the-recession-2018-11#:~:text=States%20have%20divested%20in%20public,support%20their%20students%20and%20classrooms&text=A%20ghost.&text=On%20average%2C%2047%25%20of%20school,federal%20government%20provides%20approximately%208%25>.

⁹ *Id.*; see also N'dea Yancey-Bragg, *What Is Systemic Racism? Here's What It Means and How You Can Help Dismantle It*, USA TODAY.COM (June 19, 2020, 6:19 AM), <https://www.usatoday.com/story/news/nation/2020/06/15/systemic-racism-what-does-mean/5343549002/>.

¹⁰ Lauren Gambino, *Republicans Confident They Will Keep Senate Control After Fears of Backlash; Criticism of Trump and His Handling of The Coronavirus Pandemic Had Some Republicans Bracing for a 'Bloodbath' That Didn't Occur*, THE GUARDIAN (Nov. 3, 2020) <https://www.theguardian.com/us-news/2020/nov/03/senate-elections-republicans-on-defensive-democrats>; see also Sahil Kapur, *Dems Keep House, GOP Holds Key Senate seats, NBC News Projects*, NBC NEWS (Nov. 4, 2020, 2:05 PM CST), <https://www.nbcnews.com/politics/2020-election/republicans-fight-hold-control-senate-democrats-try-capitalize-anti-trump-p-n1245847>; Grace Segers, *Live Updates Senate Elections 2020*, CBS NEWS *projects*, CBS NEWS (Nov. 4, 2020) <https://www.cbsnews.com/live-updates/senate-elections-2020-live-updates/>.

¹¹ According to national exit polls, 58% of white voters (61% of white men and 55% of white women) reported that they voted for Trump, while the vast majority of people of color (79% of Black men, 90% of Black women, 59% of Latino men, 69% of Latina women, and 58% of other races) reported voting for Biden. See, e.g., *National Exit Polls: How Different Groups Voted*, THE NEW YORK TIMES (Nov. 11, 2020) https://www.nytimes.com/interactive/2020/11/03/us/elections/exit-polls-president.html?action=click&pgtype=Article&state=default&module=styl-n-elections-2020®ion=TOP_BANNER&context=election_recirc.

¹² Intersectionality is a term coined by Critical Race Theory Scholar Kimberle Crenshaw in 1989 to describe the problem within antidiscrimination law when discrimination is analyzed only within a single-axis framework (i.e., solely race, sex, sexual orientation, class, or age). Intersectionality considers how individuals who identify as belonging to more than one marginalized group experience

unique, varying, and greater degrees of oppression that are otherwise erased when viewing discrimination through a single-axis lens. Intersectionality thus provides an analytical framework for understanding and addressing discrimination experienced by individuals who are multiply-burdened by analyzing how the intersections of various marginalized identities create harms and experiences that are unique and different from those who experience a single form of discrimination. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black, Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, Vol. 1989: Iss. 1, Article 8, U. CHI. L. FORUM. 139 (1989). The intersectionality framework is now widely used by advocacy and activist groups in examining and understanding various forms of systemic oppression and advocating for equity through an inclusive lens.

¹³ Nick Bryant, *Barack Obama Legacy: Did He Improve US Race Relations?* BBC.COM (Jan. 10, 2017), <https://www.bbc.com/news/world-us-canada-38536668>.

¹⁴ See, e.g., Michael D. Tanner, *Racial Equality: Much Progress Made, Much More Needed*, CATO.ORG, (Sept. 14, 2016), <https://www.cato.org/publications/commentary/racial-equality-much-progress-made-much-more-needed>; A.W. Geiger and Kim Parker, *For Women's History Month, a Look at Gender Gains - and Gaps - in the U.S.*, PEWRESEARCH.ORG (Mar. 15, 2018), <https://www.pewresearch.org/fact-tank/2018/03/15/for-womens-history-month-a-look-at-gender-gains-and-gaps-in-the-u-s/>; John D. Skrentny and Jane Lilly Lopez, *Obama's Immigration Reform: The Triumph of Executive Action*, 2 IND. J. OF L. AND SOC. EQUAL. 1 (2013), available at https://ccis.ucsd.edu/_files/journals/38skrentny.pdf.

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